

House Bill 1113 (AS PASSED HOUSE AND SENATE)

By: Representatives Heard of the 104th, Rynders of the 152nd, Houston of the 170th, Morris of the 155th, Royal of the 171st, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to general authority, duties, and procedure with regard to state purchasing, so as to prohibit the use of state funds by purchase orders, government contracts, credits cards, charge cards, or debit cards, or other such payment vehicles for personal benefit or gain; to provide definitions; to provide for the requirements of a state purchasing card program; to provide penalties for violators; to authorize the promulgation of rules and regulations; to amend Article 2 of Chapter 7 of Title 45 of the Official Code of Georgia Annotated, relating to reimbursements for public officers and employees, so as to prohibit state officers and employees from misappropriating advances of public funds, submitting fraudulent reimbursement requests, or approving fraudulent reimbursement requests; to provide for penalties; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to general authority, duties, and procedure with regard to state purchasing, is amended by revising Code Section 50-5-80, relating to personal purchases or sales through the department for individual ownership, all department purchases remaining state property, penalty, and applicability, as follows:

"50-5-80.

(a) As used in this Code section, the term 'person' includes natural persons, firms, partnerships, corporations, or associations.

~~(b) It shall be unlawful for any employee or official of the state or any other person to purchase, directly or indirectly, through the Department of Administrative Services, or through any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state, any article, material, merchandise, ware, commodity, or other~~

1 thing of value for the personal or individual ownership of himself or herself or other person
2 or persons. All articles, materials, merchandise, wares, commodities, or other things of
3 value purchased, directly or indirectly, by or through the Department of Administrative
4 Services or by or through any office, agency, department, board, bureau, commission,
5 institution, authority, or other entity of the state shall be and remain the property of the
6 state until sold or disposed of by the state in accordance with the laws governing the
7 disposition or sale of other state property person to obtain for his or her own personal
8 benefit, or for the benefit of any other person, any goods, services or other things of value,
9 through any resource or method established pursuant to this article, including, but not
10 limited to, purchase orders, government contracts, credit cards, charge cards, or debit cards.

11 (c)(1) ~~It shall be unlawful for any person knowingly to sell or deliver any article,~~
12 ~~material, merchandise, ware, commodity, or other thing of value to any person, directly~~
13 ~~or indirectly, by or through the Department of Administrative Services or by or through~~
14 ~~any office, agency, department, board, bureau, commission, institution, authority, or other~~
15 ~~entity of the state for the individual and personal ownership of such person or other~~
16 ~~person or persons except that property of the state may be sold or otherwise disposed of~~
17 ~~in accordance with the laws governing the sale or other disposition of state property. Any~~
18 ~~person who violates subsection (b) of this Code section by obtaining any goods, services,~~
19 ~~or other things of value in the aggregate value of less than \$500.00 shall be guilty of a~~
20 ~~misdemeanor of a high and aggravated nature which shall be punishable by not more than~~
21 ~~12 months' imprisonment and a fine not to exceed \$5,000.00. In addition to the~~
22 ~~foregoing criminal penalties, any such person shall also be subject to immediate~~
23 ~~termination of state employment and shall owe restitution to the state equal to the amount~~
24 ~~of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum~~
25 ~~to be calculated from the date each unlawful purchase was made.~~

26 (2) Any person who violates subsection (b) of this Code section by obtaining any goods,
27 services, or other things of value in the aggregate value of \$500.00 or more shall be guilty
28 of a felony which shall be punishable by not less than one nor more than 20 years'
29 imprisonment and a fine not to exceed \$50,000.00 or triple the amount of such unlawful
30 purchases, whichever is greater. In addition to the foregoing criminal penalties, any such
31 person shall also be subject to immediate termination of state employment and shall owe
32 restitution equal to the amount of such unlawful purchases, plus interest to be assessed
33 at a rate of 12 percent per annum to be calculated from the date each such unlawful
34 purchase was made.

35 (d)(1) ~~Any person who violates any provision of this Code section shall be guilty of a~~
36 ~~misdemeanor. Any person who knowingly assists another person in violating~~
37 ~~subsection (b) of this Code section shall be guilty of a misdemeanor of a high and~~

aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00 if the unlawfully purchased goods, services, or other things of value are valued in the aggregate of less than \$500.00. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(2) Any person who knowingly assists another person in violating subsection (b) of this Code section shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of the unlawful purchases, whichever is greater, if the goods, services, or other things of value are in the aggregate value of \$500.00 or more. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution for the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(e) This Code section shall not apply to any official employee purchase program for technology resources facilitated by and through the Georgia Technology Authority for state employees and public school employees of county or independent boards of education."

SECTION 2.

Said part is further amended by adding a new Code section to read as follows:

"50-5-83.

(a) As used in this Code section, the term:

(1) 'Department' means the Department of Administrative Services.

(2) 'Purchasing card' means a credit or debit card issued by a credit card company, bank, or other financial institution and provided by the State of Georgia or any of its departments or agencies under the State of Georgia Purchasing Card Program to state employees for the purpose of making purchases on behalf of such departments or agencies or the state.

(b) Any purchasing card program established by the department or by any other department or agency of the state shall conform to the following requirements:

(1) Purchasing cards shall only be issued to state employees whose job duties require the use of a purchasing card;

(2) Each department or agency of the state that allows the use of purchasing cards by its employees shall develop policies and procedures consistent with guidelines developed

1 by the department pursuant to this Code section to identify those job positions within
2 each department or agency of the state that would require the use of a purchasing card;

3 (3) Each employee receiving a purchasing card shall be required to sign an ethical
4 behavior agreement for the use of the card which shall be developed by the department;

5 (4) Each department or agency of the state that allows its employees to use purchasing
6 cards shall provide for the review of all purchases on such cards, shall maintain receipts
7 for each purchase, and shall maintain a log showing each purchase, the relevant vendor's
8 name, the item purchased, the date of the purchase, the amount of the purchase, the name
9 of the employee making the purchase, and any other information that shall be specified
10 by the department;

11 (5) Purchases made on purchasing cards shall be reviewed and approved by supervisory
12 personnel at least quarterly;

13 (6) Purchasing cards shall not be used for items over \$5,000.00 unless the item is:

14 (A) Purchased pursuant to a valid state contract; and

15 (B) Purchased in compliance with state procurement policy;

16 (7) Purchasing cards shall not be used to purchase gift cards;

17 (8) Purchasing cards shall not be used to purchase gift cards, alcoholic beverages,
18 tobacco products, or personal items that are not job related, and state contracts for
19 purchasing cards shall contain such prohibitions on the use of such purchasing cards;

20 (9) The department shall develop a training manual on the use of purchasing cards which
21 shall instruct users of purchasing cards on the maximum value utilization of such
22 purchasing cards and employees who use such purchasing cards shall comply with the
23 provisions of such manual;

24 (10) Departments and agencies of the state shall review not less than annually all
25 purchasing cards issued to their employees and shall eliminate purchasing cards for
26 employees who demonstrate consistently low usage of such purchasing cards;

27 (11) Departments and agencies of the state which have more than 100 purchasing cards
28 issued to employees shall establish goals to reduce such number of purchasing cards by
29 at least 10 percent by December 31, 2009;

30 (12) Employees hired for job positions for which purchasing cards are issued shall be
31 subjected to criminal background checks before hiring and a credit check shall be
32 completed by the hiring department or agency on all employees to whom a purchasing
33 card is issued prior to issue;

34 (13) Purchasing cards shall be issued only to employees of departments and agencies of
35 the state and no purchasing cards shall be issued to employees of foundations associated
36 with departments and agencies of the state;

(14) Each purchase made with a purchasing card shall be accompanied by a receipt or other documentation listing each item purchased, the purchase price for each item, and any taxes, fees, or other amounts paid in connection with such purchase; and

(15) With respect to any purchase made with a purchasing card, if the employee to whom such card was issued does not provide documentation meeting the requirements of paragraph (14) of this subsection to his or her supervisor for recording on the purchasing log required to be maintained as provided in paragraph (4) of this subsection, such employee shall be personally responsible for such purchase.

(c) Any employee of a department or agency of the state who knowingly:

(1) Uses a purchasing card for personal gain;

(2) Purchases items on such purchasing card that are not authorized for purchase by such employee;

(3) Purchases items in violation of this Code section; or

(4) Retains for such employee's personal use a rebate or refund from a vendor, bank, or other financial institution for a purchase or the use of a purchasing card

shall be subject to immediate termination of employment, restitution for the amount of the improper purchases, and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years imprisonment, a fine not to exceed \$50,000.00, or both.

(d) An employee's supervisor who knowingly intentionally, willfully, wantonly, or recklessly allows or who conspires with an employee who is issued a purchasing card to violate subsection (c) of this Code section shall be subject to immediate termination of employment and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years imprisonment, a fine not to exceed \$50,000.00, or both.

(e) The department is authorized to promulgate such rules and regulations as necessary to implement this Code section."

SECTION 3.

Article 2 of Chapter 7 of Title 45, relating to reimbursement expenses for public officers and employees, is amended by revising Code Section 45-7-32 of the Official Code of Georgia

Annotated, relating to reimbursement for expenses of lodging and airfare and penalty for violations, as follows:

"45-7-32.

~~Any person who intentionally violates Code Sections 45-7-29 through 45-7-31 shall be guilty of a misdemeanor.~~

(a) It shall be unlawful for any person to use any travel advance received from public funds, for nongovernmental purposes or to submit or approve, knowingly or through willful and wanton neglect, a fraudulent request to the state for reimbursement of expenses.

(b) Any person who, in violation of subsection (a) of this Code section, uses any travel advance for nongovernmental purposes or submits or approves, knowingly or through willful and wanton neglect, a fraudulent request for reimbursement of expenses, valued in the aggregate at less than \$500.00 shall be guilty of a misdemeanor of a high and aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00. In addition to the foregoing criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution to the state equal to the amount of such misappropriated travel advances or fraudulent reimbursements, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each misappropriated travel advance or fraudulent reimbursement payment was made.

(c) Any person who, in violation of subsection (a) of this Code section, uses any travel advance for nongovernmental purposes or submits or approves knowingly, or through willful and wanton neglect, a fraudulent request for reimbursement of expenses valued in the aggregate at \$500.00 or more shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of such misappropriated travel advances or fraudulent reimbursement payments, whichever is greater. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution to the state equal to the amount of such misappropriated travel advances or fraudulent reimbursements, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each misappropriated travel advance or fraudulent reimbursement payment was made."

SECTION 4.

For the purpose of promulgating rules and regulations, policies, procedures, and manuals, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2008, and shall apply to all transactions occurring on and after such date.

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SECTION 5.

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All laws and parts of laws in conflict with this Act are repealed.